CASE SUMMARY

Complaint against Housing Department for sending out messages little short of being threatening to staff upon implementation of the Voluntary Departure Scheme; issuing guidelines to staff misleading them into believing that no ceiling would be set on the number of units to be outsourced under the Management Buy Out Option; and adopting a double standard in that only the shareholding employees were allowed to apply for reinstatement

The Complaint

The complainant was a staff of the Housing Department (HD). He lodged a complaint against HD for (a) sending out messages little short of being threatening to staff upon implementation of the Voluntary Departure Scheme (VDS): staff who chose to stay would not have any promotion prospects and had to take over the work of those who had retired from service; (b) misleading them into believing that no ceiling would be set on the number of units to be outsourced under the Management Buy Out (MBO) Option in the guidelines issued to staff in March 2000 and at subsequent seminars; and (c) allowing the shareholding employees to apply for reinstatement subsequent to modification of the MBO Option without giving any consideration to non-shareholding employees, resulting in unfairness to the latter.

Background Information

2. With the implementation of the Tenants Purchase Scheme (TPS) in 1998 and subsequent measures taken by the Hong Kong Housing Authority (HKHA) to encourage home ownership among public housing tenants, more and more tenants had become owners. They had the right to opt for the services of private property management agencies instead of those of HD. According to a consultancy study commissioned by HKHA in 1998, even if HD stopped recruiting estate management and maintenance (EMM) staff and filling vacancies arising from natural wastage, there would still be over 1,300 surplus staff by 2009/10 (i.e. ten years after the implementation of the TPS) if HKHA did not take any action. To address the problem promptly and provide better services in a more cost-effective manner, HKHA approved the Phased

Service Transfer (PST) Programme in January 2000 to enable private property management agencies to take over EMM work step by step. At the same time, HKHA endorsed the VDS and the MBO Option so that HD staff who had voluntarily retired from service could form companies to provide EMM services for HKHA estates.

3. Under the VDS, staff who opted between 1 March 2000 and 28 February 2003 to leave the Civil Service would be granted compensation on the basis of abolition of office terms if their applications were approved. To assist its staff to cross over to the private sector, HD would stipulate in the PST or MBO contracts that the company awarded the contract had to employ a fixed number of HD staff.

4. Staff who opted to leave could choose: (A) not to fix the date of departure, but would retire from service after joining private property management agencies or the MBO companies; or (B) to retire from service on a certain date and would make arrangements to leave upon approval. HD would first process applications submitted by staff who chose Option B. After the staff who chose Option A had confirmed their date of departure (and thus became Option B), HD would process their applications together with those who had chosen Option B.

5. HD appreciated that the decision to go or stay was important to the staff. Therefore, HD staff were allowed to change or withdraw their applications. Nevertheless, they were required to confirm within a specified period after their applications had been approved whether or not they accept the arrangement to retire from service. Once they had accepted the arrangement, it would become irrevocable.

6. According to the Guidelines on Management Buy Out Option ("the Original Guidelines") issued by HD in March 2000, staff who were interested in forming MBO companies should submit their applications between 1 April 2000 and 28 February 2003. They were required to submit preliminary applications setting out the names of shareholding employees and their respective shareholding ratio. Once the consent to proceed was granted, they might submit initial MBO proposals and an Application to Undertake MBO Contracts detailing their proposed scope of work and the profile of the MBO company to be formed for consideration by HD. To ensure that the objective

of the MBO Option was met, staff were required to hold a minimum of 51% share of the MBO company throughout the term of the first contract (these staff were referred to as “shareholding employees”). An MBO company must employ a specified number of HD staff (i.e. “non-shareholding employees”) after obtaining a service contract.

7. On submission of an Application to Undertake MBO Contracts, an MBO company had to provide an estimate of the number of HD staff to be employed and a tentative staff list to show that it could secure at least 80% of the requisite number of non-shareholding employees. Before the award of an MBO contract, the list served as preliminary information only. The MBO companies were not required to employ any staff when they applied for registration and they were also not obliged to employ the HD staff named on the list after obtaining the contract.

8. HD began accepting applications from 1 April 2000 upon approval of the MBO Option. As at the first cut-off date, HD received 45 preliminary applications covering over 70 estates and 280,000 residential units, representing around 40% of the rental units under HKHA. The enthusiastic response from HD staff made those who chose to stay worry that the problem of surplus staff might be aggravated. On the other hand, HD also had reservations over outsourcing at one go the management service of a huge number of public rental units to the MBO companies.

9. HD explained that the Department had informed its staff through different channels from time to time that in implementing the MBO Option, the overriding principle of gradual transfer of service should be adhered to. The needs of all parties should also be fully considered on a fair basis to ensure that service quality would not be undermined. After considering prudently and balancing all the factors, the Department decided to outsource the management service of some 30,000 residential units to the MBO companies initially and issued the Supplementary Guidelines on Management Buy Out Option (“the Supplementary Guidelines”) in July 2000 to inform its staff of the ceiling of 30,000 units.

10. HD considered that the shareholding employees’ plans to leave service and form MBO companies might not fit in with the ceiling stipulated in the Supplementary Guidelines. Therefore, HD decided to give them a one-off

chance to consider whether to change the decision to retire from service and promised to consider their applications on a discretionary basis. According to information available at the time, 54 shareholding employees had confirmed acceptance of the arrangement to retire from service. However, HD had not received any applications for withdrawal within the specified period.

Comments from This Office

11. We had examined the information disseminated by HD to its staff as well as slides and notes used in briefings held by HD on the PST Programme, MBO Option and VDS, and listened to tapes recorded at the briefings. This Office was of the view that HD had only explained relevant details to its staff with reference to the actual situation. As a responsible department, it was incumbent upon HD to point out to its staff the way forward. Since staff who chose to retire from service were compensated on the basis of abolition of office terms and the posts vacated by them had to be abolished, promotion prospects of those who chose to stay would inevitably be affected. Furthermore, subsequent to the transfer of service, HD would have to reorganise its work to meet future developments. Therefore, staff who chose to stay should be prepared for new jobs and challenges. HD had acted in a responsible manner to inform its staff with reference to the actual situation. There was no suggestion of any threats. In the circumstances, we considered complaint point (a) **unsubstantiated.**

12. We had also examined the Original Guidelines issued by HD in which the provisions of the MBO Option were set out. Indeed, HD had not set a ceiling on the number of units to be outsourced in the Guidelines and also, it had not mentioned that a ceiling would be set. HD explained in its reply to this Office that the VDS had just started when the Department formulated the Original Guidelines in March 2000 and it did not have any reliable VDS figures with which to set a ceiling on the number of units to be outsourced to the MBO companies. We feel, however, that HD should all the more, be on the alert. It had the responsibility to ensure that the pace of service transfer would not affect the operation or service quality of the Department and the problem of surplus staff would not be aggravated as a result of accelerating the outsourcing of services. This Office was of the view that while HD made vigorous efforts to promote the MBO Option, it should also make it clear in advance that a ceiling might be set on the number of units to be outsourced.

In so doing, staff could take this into consideration before making a decision.

13. Notwithstanding the above, this Office recognised that HD had pointed out to its staff that the scope of work and size of contract proposed by the MBO companies must be in line with the HKHA's established outsourcing policy and objective, including that of gradual transfer of service. Moreover, the MBO companies had to go through vetting and to meet stipulated terms and conditions before they could bid for the contracts. Staff should be acquainted with these principles and requirements. Therefore, we were of the view that HD staff should not have been misled into believing that there would be no ceiling on the number of units to be outsourced to the MBO companies. Nevertheless, there was ambiguity in some of the information provided when HD launched the MBO Option in March 2000. In the circumstances, we considered complaint point (b) **partially substantiated.**

14. The explanation that shareholding and non-shareholding employees were not affected in the same way by the Supplementary Guidelines was acceptable and we agreed that the discretionary arrangement offered to the former was appropriate and reasonable. However, to meet the tendering requirements, the MBO companies were required to attach to the Application to Undertake MBO Contracts, a list of HD staff tentatively secured to show that they could secure at least 80% of the requisite number of HD staff. Therefore, we believed that some prospective shareholding employees had already started to persuade fellow HD staff to join their MBO companies when HD first launched the scheme. We also had reasons to believe that some HD staff did opt to retire from service solely for the purpose of joining the MBO companies as non-shareholding employees.

15. HD stated that the list of employees attached to the Application to Undertake MBO Contracts was only tentative and the company was not obliged to employ the staff on the list after obtaining the contract. Therefore, prospective non-shareholding employees should have only reached preliminary agreement with the MBO companies when HD issued the Supplementary Guidelines. While we would not take issue with HD on its explanation, the ceiling put forward in the Supplementary Guidelines not only reduce the MBO companies' chances of securing the contracts, but also prospective non-shareholding employees' chances of joining the MBO companies. The impact on both of them was direct and clearly foreseeable. In

the circumstances, we considered the disparity in treatment left something to be desired in terms of fairness.

16. Nevertheless, as HD had already held a number of briefing sessions to explain the VDS, non-shareholding employees should understand the difference between Option A and Option B and the condition that once they confirmed their acceptance of the voluntary departure arrangements, their applications could no longer be withdrawn. They should also know that before contracts were awarded to MBO companies, the latter had to go through vetting and bidding procedures. If they chose to confirm their acceptance of the voluntary departure arrangements, knowing very well that the formation of the companies had not been approved and contracts had not been secured, then they should also be held responsible for their own decision. In the circumstances, we considered complaint point (c) **partially substantiated.**

Conclusion and Recommendation

17. Overall, this Office concluded that the complaint was **partially substantiated**.

18. The Ombudsman made the following two recommendations to the Director of Housing:

(a) As the MBO Option was still being implemented, HD should consider to state clearly in the guidelines the maximum number of outsourced public housing units or at least indicate that a ceiling might be set on the number of outsourced units when outsourcing its services to MBO companies in future so as to avoid unnecessary misunderstanding.

(b) HD should give sympathetic consideration to and grant the requests for reinstatement made by those who had confirmed their acceptance of the voluntary departure arrangements in or before July 2000 if:

(i) they could produce concrete evidence to prove that they

really had the intention to join MBO companies as non-shareholding employees, but the companies could not be formed as scheduled when the maximum number of outsourced public housing units was capped in the Supplementary Guidelines; and

(ii) they were willing to return to the Department the compensation they received upon voluntary departure, together with the interest earned.

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